

complexities of NRC/EPA dual regulation, such feed material will not be approved for processing at a licensed mill. If the licensee can show that the proposed feed material does not contain a listed hazardous waste, this issue is resolved.

Feed material exhibiting only a characteristic of hazardous waste (ignitable, corrosive, reactive, toxic) would not be regulated as hazardous waste and could therefore be approved for recycling and extraction of source material. However, this does not apply to residues from water treatment, so acceptance of such residues as feed material will depend on their not containing any hazardous or characteristic hazardous waste. Staff may consult with EPA (or the State) before making a determination of whether the feed material contains hazardous waste.

3. Determination of Whether the Ore is Being Processed Primarily for its Source-Material Content

For the tailings and waste from the proposed processing to qualify as 11e.(2) byproduct material, the ore must be processed primarily for its source-material content. There is concern that wastes that would have to be disposed of as radioactive or mixed waste would be proposed for processing at a uranium mill primarily to be able to dispose of it in the tailings pile as 11e.(2) byproduct material. In determining whether the proposed processing is primarily for the source-material content or for the disposal of waste, either of the following tests can be used:

a. *Co-disposal test*: Determine if the feed material would be approved for disposal in the tailings impoundment under the "Final Revised Guidance on Disposal of Non-Atomic Energy Act of 1954, Section 11e.(2) Byproduct Material in Tailings Impoundments," or revisions or replacements to that guidance. If the material would be approved for disposal, it can be concluded that if a mill operator proposes to process it, the processing is primarily for the source-material content. The material would have to be physically and chemically similar to 11e.(2) byproduct material and not be subject to RCRA or other EPA hazardous-waste regulations, as discussed in the guidance.

b. *Licensee certification and justification test*: The licensee must certify under oath or affirmation that the feed material is to be processed primarily for the recovery of uranium and for no other primary purpose. The licensee must also justify, with reasonable documentation, the

certification. The justification can be based on financial considerations, the high uranium content of the feed material, or other grounds. The determination that the proposed processing is primarily for the source material content must be made on a case-specific basis.

If it can be determined, using the aforementioned guidance, that the proposed feed material meets the definition of ore, that it will not introduce a hazardous waste not otherwise exempted, and that the primary purpose of its processing is for its source-material content, the request can be approved.

Dated at Rockville, Maryland, this 13th day of September 1995.

For the Nuclear Regulatory Commission,
Joseph J. Holonich,
Chief, High-Level Waste and Uranium
Recovery Projects Branch, Division of Waste
Management, Office of Nuclear Material
Safety and Safeguards.

[FR Doc. 95-23531 Filed 9-21-95; 8:45 am]

BILLING CODE 7590-01-P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-21362; No. 812-9602]

Golden American Life Insurance Company, et al.

September 15, 1995.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: Golden American Life Insurance Company ("Golden American"), Separate Account B ("Account B") and Separate Account D ("Account D"—together with Account B, "Separate Accounts"), and Directed Services, Inc. ("DSI").

RELEVANT 1940 ACT SECTION: Order requested under Section 6(c) of the 1940 Act granting exemptions from Sections 12(b), 26(a)(2) and 27(c)(2) thereof and Rule 12b-1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of mortality and expense risk charges, including an asset-based enhanced death benefit charge, from the assets of the Separate Accounts in connection with the offering of certain variable annuity contracts ("Contracts") and certain other variable annuity contracts ("Future Contracts") issued in the future by Golden American that are materially similar to the Contracts. Applicants also request that the order permit the

deduction of a mortality and expense risk charge from the assets of any other separate accounts ("Future Accounts") established in the future by Golden American in connection with the offering of the Future Contracts.

FILING DATE: The application was filed on May 11, 1995, and amended on August 29, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 10, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Mitchell M. Cox, Esq., Vice President, Assistant Secretary and Associate General Counsel, Golden American Life Insurance Company, 1001 Jefferson Avenue, 4th Floor, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Assistant Special Counsel, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942-0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

Applicants' Representation

1. Golden American is a stock life insurance company authorized to do business in all jurisdictions, except New York. Golden American is a wholly-owned subsidiary of BT Variable, Inc. and a wholly-owned indirect subsidiary of Bankers Trust Company.

2. The Separate Accounts were established by Golden American as segregated asset accounts to fund variable annuity contracts. Account B is registered under the 1940 Act as a unit investment trust. Account D is registered under the 1940 Act as a non-diversified open-end management company. Registration statements on Form N-4 and Form N-3, registering the Contracts as securities under the

Securities Act of 1933 ("1933 Act") have been filed with the Commission. Future Accounts also will be established by Golden American as segregated asset accounts. Future Accounts will be registered with the Commission either as unit investment trusts or open-end management companies under the 1940 Act. Registration statements will be filed with the Commission to register Future Contracts funded by the Future Accounts as securities under the 1933 Act.¹

3. Account B presently has thirteen divisions, eleven of which are available for investment under the Contracts. Each investment division of Account B invests in shares of a corresponding series of The GCG Trust ("Trust"). Account D's only division, the Managed Global Account, invests directly in portfolio securities. (Account B and Account D divisions are referred to collectively as "Divisions.") Additional divisions may be established in the future within the Separate Accounts and may invest in shares of the Trust, another mutual fund or investment vehicle, or directly in portfolio securities. Divisions of Future Accounts established as unit investment trusts may invest in the Trust or other registered open-end management companies. Divisions of Future Accounts established as open-end management companies will invest directly in portfolio securities.

4. DSI, a wholly-owned subsidiary of BT Variable, Inc., is the distributor of the Contracts and of other contracts issued by Golden American. DSI has entered into and will continue to enter into sales agreements with broker-dealers to solicit for the sale of the Contracts through registered representatives licensed to sell securities and variable insurance contracts, including variable annuities. DSI is registered under the Securities Exchange Act of 1934 as a broker-dealer and is a member of the National Association of Securities Dealers, Inc. DIS also is registered with the Commission as an investment adviser.

5. The Trust is registered under the 1940 Act as an open-end management investment company. The Trust currently offers eleven series available for investment under the Contracts. DSI serves as manager to each series of the Trust.

6. The Contracts are deferred flexible premium variable annuity contracts that are issued on a group and individual

basis. The Contracts may be purchased on a non-tax qualified basis ("Non-Qualified Contracts") or in connection with retirement plans that qualify for special federal tax treatment under Section 408 of the Internal Revenue Code ("Qualified Contracts").

7. The Contracts may be obtained: (a) Under a flexible premium plan which provides for an initial premium payment and for optional subsequent premium payments; (b) pursuant to an exchange of other contracts issued by insurance companies not affiliated with Golden American effected in accordance with Section 1035 of the Internal Revenue Code of 1986, as amended; and (c) through an update of a deferred variable annuity contract previously issued by Golden American to incorporate the features of the Contract described herein.

8. The Contracts provide for the accumulation of values on a variable basis, a fixed basis, or both, and for the payment of periodic annuity benefits on a variable or fixed basis. Contract owners may allocate premium payments, or reallocate accumulation value under the Contracts, among the Divisions, Golden American's Fixed Account Option for specified Guarantee Periods² or, in those states where the fixed account is not available, Golden American's Fixed Interest Division, which is part of Golden American's general account.³ Future Contracts offered through the Separate Accounts or Future Accounts also may offer a Fixed Account Option or Fixed Interest Division materially similar to those described herein.

9. The Contracts also provide for the payment of a death benefit, payable in a single sum or applied to any of the annuity options available under the Contracts. Contract owners generally may choose from among: (a) A standard death benefit equal to the greatest of (i) the accumulation value, (ii) total premium payments less partial withdrawals, and (iii) cash surrender value; or (b) either of two optional enhanced death benefits: the "7% Solution" and the "Annual Ratchet". A Contract owner may elect an optional death benefit only at issue, and only if the Contract owner or annuitant (when the Contract owner is other than an individual) is age 75 or less with respect

to the 7% Solution option, or age 79 or less with respect to Annual Ratchet option. If an optional death benefit is selected, the death benefit will equal the greatest of: (a) accumulation value; (b) total premiums less partial withdrawals; (c) cash surrender value; and (d) the optional death benefit.

a. 7% Solution Option

Under the 7% Solution option, the death benefit payable equals: (i) the guaranteed death benefit from the prior valuation date;⁴ plus (ii) interest calculated on the guaranteed death benefit for the current valuation period at an annual rate of 7%;⁵ plus (iii) any additional premiums paid during the current valuation period; less (iv) any partial withdrawals made during the current valuation period. Each accumulated initial or additional premium payment, reduced by any partial withdrawal, will continue to grow at the guaranteed death benefit interest rate until reaching its maximum guaranteed death benefit. Such maximum guaranteed death benefit is initially equal to two times the initial or each additional premium paid. Thereafter, the maximum guaranteed death benefit as of the effective date of a partial withdrawal is reduced first by the amount of any partial withdrawal of earnings and second in proportion to the reduction in the accumulation value for any partial withdrawal of premium (in each case, including any associated market value adjustment and surrender charge incurred).

b. Annual Ratchet Option

Under the Annual Ratchet option, the death benefit payable equals: (i) The guaranteed death benefit from the prior valuation date;⁶ less (ii) any partial withdrawals taken since the prior valuation date; plus (iii) additional premium paid since the prior valuation date.

c. Annually on each Contract anniversary on or prior to the Contract owner attaining age 80, the guaranteed death benefit is reset to equal the greater of (i) the guaranteed death benefit from the prior valuation date, less any partial

⁴ On the Contract date the guaranteed death benefit is equal to the initial premium.

⁵ With respect to amounts in the Liquid Asset Division and Limited Maturity bond Division, and amounts in a Fixed Allocation or the Fixed Interest Division, however, the interest rate applied will be the applicable net rate of return for the Liquid Asset Division and the Limited Maturity Bond Division, and interest credited to the Fixed Allocation or Fixed Interest Division during the current valuation period, if such rate is less than an effective annual rate of 7%.

⁶ On the Contract date the guaranteed death benefit is equal to the initial premium.

¹ Future Accounts may receive and invest premium payments under Future Contracts, as well as other variable annuity contracts, although relief sought herein will not apply to such other contracts.

² Golden American currently offers Fixed Allocations to which it credits fixed rates of interest for Guarantee Periods with durations of 1, 3, 5, 7 and 10 years, but reserves the right to increase or decrease the number of Guarantee Periods available.

³ Applicants state that the Fixed Interest Division is not registered under the 1940 Act or under the 1933 Act in reliance upon Section 3(a)(8) of the 1933 Act.

withdrawals taken since the prior valuation date, plus any additional premiums paid since the prior valuation date, or (ii) the accumulation value as of such date.

10. The following charges are deducted under the Contracts.

a. **Premium Taxes.** A premium tax charge, ranging from 0% to 3.5% of premiums, may be deducted from accumulation value for premium taxes assessed against Golden American by various states and local jurisdictions. Golden American reserves the right to change this amount to conform with changes in the law or in the state of residence of the Contract owner. The charge will be deducted on the annuity commencement date if premium taxes are incurred on such date. If a premium tax is incurred at the time of premium payment, deduction of the premium tax charge will be deferred until the Contract is surrendered, an excess partial withdrawal is taken, or the date annuity payments commence.

b. **Contingent Deferred Sales Charge ("CDSC").** No sales charge currently is deducted from premium payments. A CDSC will be imposed as a percentage of premium payments being withdrawn if the contract is surrendered or an excess partial withdrawal is taken within seven years from the date Golden American receives and accepts each premium payment. The amount of the surrender charge at the time of surrender or excess partial withdrawal depends upon the number of complete years that have elapsed since the premium payment being withdrawn was made. In calculating the CDSC, Golden American treats premium payments as being withdrawn on a first-in first-out basis, and as being withdrawn before earnings. The CDSC as a percentage of each premium payment is determined as follows:

Surrender charge (as a percent of the premium payment being withdrawn)	Complete years since receipt of premium
7	0-1
6	2
5	3
4	4
3	5
1	6
0	7 and over.

In no event will the CDSC exceed 8.5% of premium payments.

Amounts equal in the aggregate to 15% of the accumulation value may be withdrawn free of any CDSC each Contract year. Golden American will impose a CDSC on any partial withdrawal in excess of that amount;

the CDSC will be deducted from the accumulation value in proportion to the accumulation value in each Division of the Separate Accounts, a Fixed Allocation or the Fixed Interest Division from which the withdrawal is taken. Golden American may waive the CDSC for a surrender or "excess partial withdrawal" where the Contract owner (i) receives qualified extended medical care on or after the first Contract anniversary for at least 45 days during any continuous 60 day period, or (ii) is first diagnosed by a qualifying medical professional, on or after the first Contract anniversary, as having a qualifying terminal illness.

c. **Administrative Charge.** A charge of \$40 is deducted on the Contract anniversary and on surrender of the Contract for administrative costs expected to be incurred over the life of the Contracts. No administrative charge is deducted if the accumulation value or total premiums paid at the end of the Contract processing period equals or exceeds \$100,000. The charge is deducted proportionately from the Divisions, Fixed Allocation or Fixed Interest Division. The charge is guaranteed not to increase for the duration of the Contracts. Applicants intend to rely on Rule 26a-1 under the 1940 Act to deduct this charge. Golden American does not anticipate any profit from this charge.

d. **Excess Allocation Charge.** No charge currently is deducted for reallocation of accumulation values. Golden American reserves the right to charge a maximum \$25 fee for each reallocation made after the twelfth reallocation in a Contract year.⁷ This charge will be deducted proportionately from each Division and Fixed Allocation or Fixed Interest Division from which such reallocation is made, unless the Contract owner has elected the option to have all charges against accumulation value deducted exclusively from the Liquid Asset Division. Applicants intend to rely on Rule 26a-1 under the 1940 Act to deduct this charge. Golden American does not expect to make a profit from this charge.

e. **Asset Based Administrative Charge.** A daily charge equal to an annual rate of 0.15% will be deducted from the assets in each Division for expenses incurred in administration of the Contracts and the Separate Accounts. The charge is guaranteed not to increase, and is designed to reimburse

⁷ Any reallocations made pursuant to the dollar cost averaging program will not be included in determining if an excess allocation charge will be imposed.

Golden American only for administrative costs expected to be incurred over the life of the Contracts. Applicants represent that the charge will be deducted in reliance on Rule 26a-1 under the 1940 Act. Golden American does not expect to make a profit from this charge.

f. **Mortality and Expense Risk Charge.** Golden American imposes charges as compensation for bearing certain mortality and expense risks under the Contracts. For Contracts with the standard death benefit or an Annual Ratchet death benefit, Golden American will deduct a daily mortality and expense risk charge from the Separate Accounts at an annual rate not to exceed a maximum 1.25% of the value of the average daily net asset in each Division. Of the 1.25% mortality and expense risk charge associated with the Annual Ratchet death benefit, approximately 0.90% is allocable to mortality risks and 0.35% to expense risks. If the Contract owner selects the standard death benefit, the mortality and expense risk charge will decrease. For Contracts with the 7% Solution death benefit, Golden American will deduct a daily mortality and expense risk charge at an annual rate of 1.40% (of which 0.35% is allocable to expense risks, 0.90% to mortality risks and 0.15% to the additional enhanced death benefit) of the value of the average daily net assets in each Division. This charge may be a source of profit for Golden American and the excess may be used for, among other things, the payment of distribution expenses.

Golden American will assume two mortality risks under the Contracts: (1) That the annuity rates under the Contracts cannot be changed to the detriment of Contract owners even if annuitants live longer than projected; and (2) that Golden American may be obligated to pay a claim for a standard death benefit or an optional death benefit in excess of a Contract owner's cash surrender value. Golden American also will assume an expense risk through its guarantee not to increase the charges for issuing the Contracts and administering the Contracts and the Separate Accounts, regardless of its actual expenses.

g. **Deductions for Other Taxes.** No charge currently is imposed for federal, state or local income taxes attributable to the Separate Accounts. Golden American may make such a charge in the future, subject to necessary regulatory approvals. Charges also may be made for any other applicable taxes or economic burden resulting from the application of tax laws that Golden

American determines to be properly attributable to the Separate Accounts.

h. Expenses of the Trust and Separate Accounts. Net assets of Account B and Account D will reflect the investment advisory fee and other expenses incurred by the Trust and by the Managed Global Account, respectively.

11. Applicants request that the exemptive relief also apply to Future Contracts issued by Golden American through the Separate Accounts or Future Accounts which may invest in the Trust or in shares of other registered investment companies, or directly in a portfolio of securities. Applicants state that a Future Contract will be deemed a materially similar contract if it provides the same rights, benefits and obligations as the Contract described herein and has charges equal to or less than the charges assessed under the Contracts, including the mortality and expense risk charge, enhanced death benefit charge and CDSC for the Contracts described herein. In particular, the maximum surrender charge will be 7% of a premium payment, and each Contract year a Contract owner may withdraw up to 15% of accumulation value free of any CDSC that otherwise might apply. After a premium payment has been invested for 7 years, no CDSC will apply. Moreover, in no event will the CDSC exceed 8.5% of premium payments made.

Applicants Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes or persons, securities or transactions, from the provisions of the 1940 Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Exemptive Relief Under Section 26(a)(2) and 27(c)(2) of the 1940 Act

2. Applicants request an order under Section 6(c) granting exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to permit the assessment of charges for mortality and expense risks, including the enhanced death benefit charge, under the Contracts and Future Contracts.

3. Applicants submit that their request for an order that applies to Future Contracts and to Future Accounts is appropriate in the public interest and consistent with the protection of investors and purposes

fairly intended by the policy and provisions of the 1940 Act. Without the requested relief, Golden American would have to request and obtain exemptive relief for each new Future Account it establishes and each class of Future Contracts it issues. Applicants represent that such additional requests for exemptive relief would present no issues under the 1940 Act that have not already been addressed in this application.

4. Applicants further state that the requested relief is appropriate in the public interest because it would promote competitiveness in the variable annuity policy market by eliminating the need for Golden American to file redundant exemptive applications, thereby reducing its administrative expenses and maximizing the efficient use of its resources. Investors would not receive any benefit or additional protection by requiring Golden American to seek exemptive relief repeatedly with respect to the issues addressed in this Application. Applicants assert that the delay and expense involved would impair Golden American's ability to take advantage effectively of business opportunities as they arise and would disadvantage investors as a result of Golden American's increased overhead expenses.

5. Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act, in relevant part, prohibit a registered unit investment trust, its depositor or principal underwriter, from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, are deposited with a qualified bank and held under arrangements which prohibit any payment to the depositor or principal underwriter except a reasonable fee, as the Commission may prescribe, for performing bookkeeping and other administrative duties normally performed by the bank itself.

6. Applicants submit that the mortality and expense risk charges are reasonable and proper insurance charges. Applicants represent that the mortality and expense risk charges are within the range of industry practice for comparable variable annuity contracts. This representation is based upon Golden American's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, existence of charge level guarantees, and guaranteed annuity rates. Applicants state that Golden American will maintain at its home office and make available to the Commission, upon request, a memorandum setting forth in detail the

products analyzed in the course of, and the methodology and results of, its comparative survey.

7. Applicants further represent that the additional charge for the enhanced death benefit is reasonable in relation to the risks assumed by Golden American in connection with the 7% Solution option. In arriving at this determination, Golden American ran a large number of computer generated trials at various issue ages and determined actuarially the level cost of providing the enhanced death benefits. Based on this analysis, Golden American determined that an additional charge equal to 0.15% of the net assets in the Separate Accounts was a reasonable charge. Golden American undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in determining that the additional charge for the enhanced death benefit under the 7% Solution option is reasonable in relation to the risks assumed by Golden American under the Contracts.

8. Applicants acknowledge that, if a profit is realized from the mortality and expense risk charge under the Contracts, all or a portion of such profit may be available to pay distribution expenses borne by Golden American. Golden American has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Separate Accounts and the Contract owners. Golden American will keep at its home office and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

9. With respect to any Future Contracts offered through the Separate Accounts and any Future Accounts, Golden American undertakes that it will not offer any such Future Contracts without first making the determination that the mortality and expense risk charge was within the range of industry practice, that any additional charge for any enhanced death benefit was reasonable in relation to the risks assessed, and that there is a reasonable likelihood that proposed distribution financing arrangements will benefit the affected Separate Accounts or Future Accounts and existing Contract owners and Future Contract owners.

Further, the basis for each such determination shall be set forth in a memorandum which will be maintained by Golden American at its home office and which will be made available to the Commission.

10. Applicants represent that Account B and any Future Account established as a unit investment trust will invest only in a management investment

company that has undertaken, in the event any such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors, a majority of whom are not interested persons of any such investment company, as defined in the 1940 Act, formulate and approve any plan under Rule 12b-1 under the 1940 Act to finance distribution expenses. Applicants further represent that Account D undertakes, and any Future Account established as an open-end management company will undertake, in the event that it adopts a plan under Rule 12b-1 to finance distribution expenses, to have a majority of its board of directors who are not interested persons, formulate and approve any plan under Rule 12b-1 to finance distribution expenses.

Request for Exemptive Relief From Section 12(b) of the 1940 Act and Rule 12b-1

11. Section 12(b) of the 1940 Act makes it unlawful for a registered investment company from acting as a distributor of securities of which it is the issuer, except through an underwriter. Rule 12b-1 prohibits any such company from directly or indirectly financing distribution of the company's shares except in compliance with the Rule's requirements. Rule 12b-1 requires that a company financing distribution of its shares formulate a written plan describing all material aspects of the proposed arrangement, and that the plan be approved initially by the company's shareholders, directors and disinterested directors. The directors must vote annually to continue such a plan, and the directors must conclude that there is a reasonable likelihood that implementation or continuation of the plan will benefit the company and its shareholders.

12. Applicants expect to finance the expenses of distributing the Contracts through use of Golden American's general assets, which may be attributable in part to the surplus from mortality and expense risk charges. Golden American requests an order under Section 6(c) of the 1940 Act for exemptive relief from Section 12(b) of the 1940 Act and Rule 12b-1 thereunder, insofar as the proposed distribution financing arrangement might be deemed to involve the direct or indirect use of assets in Account D, or in any Future Account established as an open-end management company, for distribution. Applicants represent that this aspect of the requested relief is solely "defensive," i.e., to clarify that the current distribution financing is not subject to Section 12(b) or Rule 12b-1

thereunder. Applicants contend that the requested relief is not intended to cover the imposition of a separate charge for distribution expenses against the assets in Account D. Applicants represent that no separate charge for distribution expenses will be assessed on the assets of Account D or any Future Account organized as an open-end management company unless and until the charge complies with the requirements of Rule 12b-1.

13. Applicants assert that Rule 12b-1 was not intended to apply to managed accounts, that the Rule's provisions are directed only at traditional mutual funds and should not be applied to managed accounts, and that the protections of Rule 12b-1 are not necessary in the case of managed accounts. Applicants state that the Commission's review under Sections 26 and 27 of the 1940 Act of the reasonableness of asset charges of managed accounts, and explicit prospectus disclosure that the asset charge may be used for distribution expenses, provide sufficient protection for Contract owners and obviates the need for a managed account to comply with the requirements of Rule 12b-1.

14. Applicants assert that application of Rule 12b-1 to managed accounts would produce a burdensome and inequitable treatment of these accounts, would place them at an unfair disadvantage with respect to unit investment trusts offering similar annuity contracts, and would create an artificial distinction between managed accounts and unit investment trusts not justified by policy considerations.

Conclusion

Applicants assert that for the reasons and based upon the facts set forth above, the requested exemptions from sections 12(b), 26(a)(2)(C) and 27(c)(2) of the 1940 Act and Rule 12b-1 thereunder to deduct a mortality and expense risk charge under the Contracts and Future Contracts offered by the Separate Accounts or by Future Accounts are necessary and appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret M. McFarland,

Deputy Secretary.

[FR Doc. 95-23507 Filed 9-21-95; 8:45 am]

BILLING CODE 8010-02-M

[Release No. 35-26375]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

September 15, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by October 10, 1995, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Gas System, Inc., et al. (70-8471)

Columbia Gas System, Inc. ("Columbia"), 20 Montchanin Road, Wilmington, Delaware 19807, a registered holding company, seventeen wholly-owned subsidiary companies of Columbia,¹ all of which are engaged in

¹ Columbia Gas of Pennsylvania, Inc. ("Columbia Pennsylvania"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Ohio, Inc. ("Columbia Ohio"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Maryland, Inc. ("Columbia Maryland"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gas of Kentucky, Inc. ("Columbia Kentucky"), 200 Civic Center Drive, Columbus, Ohio 43215; Commonwealth Gas Services, Inc. ("Commonwealth Services"), 200 Civic Center Drive, Columbus, Ohio 43215; Columbia Gulf Transmission Co. ("Columbia Gulf"), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314; Columbia Gas Development Corp. ("Columbia Development"), One Riverway, Houston, Texas 77058; Columbia Natural Resources, Inc. ("Columbia Resources"), 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Coal Gasification Corp.

Continued